

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ORIGINAL

UNITED STATES OF AMERICA,

Plaintiff,

v.

G.B. ENTERPRISES,

Defendant.

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) No. CR04-172C

)

)

) U.S. Courthouse

) Seattle, Washington

) 9:00 a.m.

) June 25, 2004 AT SEATTLE

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BY

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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VERBATIM REPORTED PROCEEDINGS FOR: SENTENCING

BEFORE THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

ROBERT WESTINGHOUSE, ESQ.
Assistant United States Attorney
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Seattle, Washington 98101

For the Defendant:

ALLEN BENTLEY, ESQ.
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04-CR-00172-TN

Court Reporter:

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1 THE CLERK: CR04-172C, *United States of America v.*
2 *G.B. Enterprises*. Counsel, please step forward and make your
3 appearance.

4 MR. BENTLEY: Morning, Your Honor, Allen Bentley
5 representing the defendant, *G.B. Enterprises*. With me is
6 Ernest Conrad, who will be representing the corporation.

7 MR. WESTINGHOUSE: Good morning. May it please the
8 Court, Bob Westinghouse on behalf of the United States.

9 THE COURT: Mr. Westinghouse. Is there any reason
10 why we couldn't do both of these defendants at the same time?

11 MR. WESTINGHOUSE: I was about to propose that,
12 Your Honor. Mr. McCallum is also present I believe.

13 THE COURT: All right.

14 THE CLERK: CR04-173C, *United State v. Alpha*
15 *Technologies*. Counsel, please make your appearances for the
16 record.

17 MR. MCCALLUM: Good morning, Your Honor, Robert
18 McCallum for Alpha Technologies, and Mr. Johnson the
19 president of Alpha Technologies is also present.

20 THE COURT: Mr. McCallum. Mr. Bentley, you want to
21 be heard? I only have a couple of questions about this, one
22 is, has the back taxes -- or have the back taxes and
23 penalties and interest been paid?

24 MR. WESTINGHOUSE: Your Honor, the Defendant, *G.B.*
25 *Enterprises, Inc.*, has the checks with them today. We have

1 seen copies of them. It's my understanding that if the Court
2 accepts the plea agreement, they're prepared to hand those
3 checks to a representative of the Internal Revenue Service at
4 the close of this proceeding.

5 THE COURT: And what do they total?

6 MR. WESTINGHOUSE: The total, Your Honor, is the
7 amount set forth in proposed judgment, which is \$32,911,999,
8 and that is the difference between the total agreed amount,
9 which is 35,509,567 less amounts that have been prepaid.

10 THE COURT: Okay. And these checks, are they
11 cashier's checks?

12 MR. BENTLEY: They are, Your Honor.

13 THE COURT: Can I take a look at them?

14 MR. BENTLEY: I may add that we also have copies
15 and the originals of the checks to cover the fine that is
16 anticipated as part of the plea agreement for both
17 defendants.

18 MR. WESTINGHOUSE: May I approach, Your Honor?

19 THE COURT: Yes.

20 MR. WESTINGHOUSE: Your Honor, Mr. Bentley has
21 advised me that the bank cannot issue a check for more than
22 \$10 million, so they are split into four separate checks.

23 THE COURT: Okay. All right. Let me also say
24 before you start, Mr. Bentley, I'm inclined to accept these
25 plea agreements. The only misgiving I have is that the

1 individual who is primarily apparently responsible for what
2 went on here is not facing an indictment. However, given the
3 fact that he is not in this country and is probably not
4 subject to extradition, I easily understand how the
5 Government came to the resolution that is proposed here, and
6 I particularly commend the Government for not falling prey to
7 the easy out of indicting employees who were simply following
8 instructions of somebody who was more culpable.

9 And I am also inclined to accept this agreement
10 because of the fact that this huge amount of money is, in
11 fact, being paid to the Government. Were it not for that, if
12 there was nothing more than a judgment against a shell
13 corporation and the like, I might look at this a lot
14 differently. Having said those things, I'm going to accept
15 both of the plea agreements. So, do you wish to be heard?

16 MR. BENTLEY: I have nothing to add to the material
17 that has been already been presented to the Court and in the
18 presentence report, and I would like to indicate for the
19 record that we spent several hours yesterday around a
20 conference table with representatives of both corporations
21 and read the presentence report, which is essentially the
22 same. We read it word for word and explained and answered
23 any questions that they had.

24 THE COURT: Okay. Mr. McCallum, do you wish to say
25 anything?

1 MR. MCCALLUM: Thank you, Your Honor. I actually
2 have nothing to add if the Court is inclined to accept the
3 C1C. I do want to emphasize that it has been a lengthy
4 investigation that has gone on for almost eight years. We
5 have spent a great deal of time with Mr. Westinghouse and Ms.
6 Loitz who is not here today hammering out the terms of this,
7 and I think that this compromise is a result of those
8 negotiations, so I have nothing to add.

9 I would also like to put on the record that Mr.
10 Johnson did review the presentence report yesterday word for
11 word, and I don't believe that he has any comments on it.

12 THE COURT: All right. Mr. Westinghouse?

13 MR. WESTINGHOUSE: I have nothing to add to what I
14 have already submitted, Your Honor.

15 THE COURT: All right. In the G.B. Enterprises
16 case I find the total offense level is 22, the culpability
17 score is ten, and as -- I'm accepting the presentence report
18 recommendation of probation of three years, a fine of
19 \$500,000, a special assessment of \$400, restitution in the
20 amount of \$35,505,000 and 249 cents (sic). The probation
21 will be subject to standard conditions together with those
22 additional conditions set forth in the presentence, and the
23 justification for the sentence is that set forth in the
24 presentence report.

25 As to Alpha Technologies, Inc., I find the total

1 offense level is 22, the culpability score is nine. I'm
2 imposing a period of probation of one year, a fine of
3 \$500,000, a special assessment of \$400 for the count of
4 conviction. The probation will be subject to standard
5 conditions together with those additional conditions set
6 forth in the presentence report, and the justification for
7 the sentence is as set forth in the presentence report.

8 And to each of the representatives of each of the
9 defendants, I will state that you may have a right to appeal
10 this sentence. If you wish to file a notice of appeal, it
11 must be filed within ten days of today. If you wish the
12 assistance of an attorney in filing a notice of appeal and
13 cannot afford one, one will be appointed to assist you if you
14 so request. If you wish the assistance of the clerk in
15 filing a notice of appeal, she will assist you if you so
16 request. Do each of you understand?

17 MR. CONRAD: Yes.

18 THE COURT: Mr. Westinghouse?

19 MR. WESTINGHOUSE: Your Honor, with respect to the
20 restitution now for G.B. Enterprises, Inc., there has been a
21 slight change in calculation due to the further computations
22 and penalties and interest, and I believe the appropriate
23 amount is \$35,509,567, if I may use that amount?

24 THE COURT: That's fine. Make that change.

25 MR. WESTINGHOUSE: I have already prepared the

1 judgments and had the opportunity to review them with
2 counsel. If I may approach?

3 THE COURT: Yes.

4 MR. MCCALLUM: Your Honor, may I see the judgment.
5 We spoke a while earlier this week, but I have not seen the
6 final version. Thank you.

7 MR. BENTLEY: I have seen it, Your Honor.

8 THE COURT: Okay.

9 MR. WESTINGHOUSE: If I may approach?

10 MR. MCCALLUM: Thank you, Your Honor, those are
11 acceptable.

12 THE COURT: All right.

13 THE COURT: Counsel, we'll be at recess.

14 (Proceedings concluded 9:35 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)

) SS

COUNTY OF KING)

I, Donna Hunter, Certified Shorthand Reporter and Notary Public duly and qualified in and for the State of Washington do hereby certify that the foregoing transcript is a true and correct transcript of my original stenographic notes.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this testimony is taken; and furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 30th day of June, 2004.



A handwritten signature of Donna J. Hunter in dark ink, written over a horizontal line.

NOTARY IN AND FOR THE STATE OF
WASHINGTON, RESIDING IN SEATTLE